

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

10-CR-6058CJS

-v-

DAVID RODRIGUEZ,

Defendant.

GOVERNMENT'S RESPONSE TO THE DEFENDANT'S SENTENCING STATEMENT

On November 10, 2010, defendant David Rodriguez pled guilty pursuant to a written plea agreement containing a Rule 11(c) (1) (C) agreement of a sentence of 180 months imprisonment. The agreement also provided that, with the exception of a downward departure motion for substantial assistance, the defendant agreed not to "advocate or recommend the application of any other Guideline, or move for any Guidelines departure, or move for or recommend a sentence outside the Guidelines." Plea Agreement, ¶12. The plea agreement also provided that a breach of this agreement by the defendant would relieve the government from any agreement with respect to filing a sentencing motion or recommendation. Plea Agreement, ¶13.

On March 6, 2012, Rodriguez filed a sentencing statement asking this Court to consider several claims. Notably, the

sentencing statement is silent as to whether Rodriguez has any objection to the PSR or whether Rodriguez is advocating for the Court to accept the 11(c) (1) (C) agreement of 180 months. In any event, and without commenting on the accuracy of the claims Rodriguez makes in his Sentencing Statement, the government construes his Sentencing Statement as advocating, as he is bound to pursuant to the plea agreement, for the 180-month sentence of imprisonment.

DATED: Rochester, New York, March 8, 2012.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 8, 2012, I electronically filed the foregoing with the Clerk of the District Court using its CM/ECF system, which would then electronically notify the following CM/ECF participants on this case:

1. Matthew D. Nafus, Esq.

S/ANNA M. SEDOR
ANNA M. SEDOR
